

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUDY K. FOSTER
Claimant
VS.
LEARJET, INC.
Respondent
Self-Insured

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Docket No. 181,150

ORDER

The respondent requests review of Administrative Law Judge Shannon S. Krysl's Award dated July 11, 1995. The Appeals Board heard oral argument in Wichita, Kansas, on November 8, 1995.

APPEARANCES

Claimant appeared by her attorney, James B. Zongker of Wichita, Kansas. The respondent appeared by its attorney, Edward D. Heath, Jr. of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the stipulations of the parties are listed in the Award. In addition, at oral argument the parties stipulated respondent received written claim for workers compensation benefits on August 19, 1993.

ISSUES

The Administrative Law Judge granted claimant permanent partial disability benefits based upon an eighty-five percent (85%) work disability. The respondent requested review and contends that claimant failed to give timely notice of accident as required by K.S.A. 44-520. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds:

The Award should be affirmed. The Administrative Law Judge properly analyzed and applied the applicable law to the pertinent facts and found that claimant sustained a work-related accident caused by repetitive mini-trauma to her lumbar spine that resulted in lumbar disc herniation. Based upon the testimony of board-certified orthopedic surgeon Robert A. Rawcliffe, Jr., M.D., the repetitive mini-trauma continued through claimant's last day of work which was August 10, 1993. On that day claimant stopped working due to her back pain. Although respondent denies claimant told her supervisors her back was worsening as a result of her work activities, the evidence is uncontroverted that claimant's attorney mailed the respondent written claim for workers compensation benefits which

respondent received on August 19, 1993. Therefore, respondent cannot deny it had notice of accident after that date.

Because the injury to claimant's back continued through her last day of work on August 10, 1993, that day is designated the date of accident. See Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994). K.S.A. 44-520 requires employees to provide their employer notice of accident within ten (10) days of its occurrence. Respondent received written documentation concerning claimant's accident and claim for benefits on August 19, 1993, thus, the ten (10) day requirement to give notice has been satisfied.

The Appeals Board adopts the findings and conclusions set forth of the Administrative Law Judge to the extent they are not inconsistent with the findings made herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl entered in this proceeding on July 11, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: James B. Zongker, Wichita, Kansas
Edward D. Heath, Jr., Wichita, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director